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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 MIAR K. GAINER,) Case No. EDCV 13-01566-GHK (KK)
12 Plaintiff,)
13 v.) ORDER TO SHOW CAUSE
14 TIMOTHY CROSS, et al.,)
15 Defendants.)
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18 I.

19 **PROCEDURAL HISTORY**

20 On June 3, 2014, Plaintiff Miar K. Gainer (“Plaintiff”), proceeding *pro se*
21 and *in forma pauperis*, filed his Fourth Amended Complaint (“FAC”). ECF
22 Docket (“docket”) No. 26. The FAC was screened and the Court ordered service
23 on the sole defendant named in the FAC, Christian Dekker, on June 4, 2014.
24 Docket Nos. 27-29.

25 On March 19, 2015, the Court received Process Receipt and Return Forms
26 for defendant Dekker who was served on March 12, 2015. Docket No. 35.
27 Therefore, a response to the FAC by defendant Dekker was due on or before April
28 2, 2015. See Fed. R. Civ. P. 12(a)(1).

1 Defendant Dekker failed to respond by April 2, 2015. Thus, on May 22,
2 2015, this Court issued an order for defendant Dekker to show cause as to why he
3 failed to file a responsive pleading. Docket No. 38. As of this date, defendant
4 Dekker has failed to file a response to the FAC, or the Court's May 22 2015 Order
5 to Show Cause.

6 On June 29, 2015, Plaintiff filed a Request for Entry of Default, pursuant to
7 Federal Rule of Civil Procedure 55(a). Docket No. 40. On June 30, 2015, the
8 Clerk of the Court entered default against defendant Dekker, in accordance with
9 Rule 55(a). Docket No. 41.

10 II.

11 LEGAL STANDARD

12 The failure of a party to defend against an action can be grounds for entry of
13 judgment against that party. Federal Rule of Civil Procedure 55 provides a
14 "two-step process for the entry of judgment against a party who fails to defend:
15 first, the entry of a default, and second, the entry of a default judgment." City of
16 New York v. Mickalis Pawn Shop, LLC, 645 F.3d 114, 128 (2d Cir. 2011)
17 (internal quotation marks omitted). "The first step, entry of a default, formalizes a
18 judicial recognition that a defendant has, through its failure to defend the action,
19 admitted liability to the plaintiff." Id. "The second step, entry of a default
20 judgment, converts the defendant's admission of liability into a final judgment that
21 terminates the litigation and awards the plaintiff any relief to which the court
22 decides it is entitled, to the extent permitted by Rule 54(c)." Id. A defendant's
23 default *does not* automatically entitle the plaintiff to a court-ordered judgment. See
24 Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986). Rather, granting or
25 denying relief is entirely within the court's discretion. See id.

26 Entry of default judgment—the second of these two steps—is governed by
27 Rule 55(b), which provides as follows:

28 (b) Entering a Default Judgment.

1 (1) By the Clerk. If the plaintiff's claim is for a
2 sum certain or a sum that can be made certain by
3 computation, the clerk--on the plaintiff's request, with an
4 affidavit showing the amount due--must enter judgment
5 for that amount and costs against a defendant who has
6 been defaulted for not appearing and who is neither a
7 minor nor an incompetent person.

8 (2) By the Court. In all other cases, the party must
9 apply to the court for a default judgment. A default
10 judgment may be entered against a minor or incompetent
11 person only if represented by a general guardian,
12 conservator, or other like fiduciary who has appeared. If
13 the party against whom a default judgment is sought has
14 appeared personally or by a representative, that party or
15 its representative must be served with written notice of
16 the application at least 7 days before the hearing. The
17 court may conduct hearings or make referrals--preserving
18 any federal statutory right to a jury trial--when, to enter
19 or effectuate judgment, it needs to:

- 20 (A) conduct an accounting;
- 21 (B) determine the amount of damages;
- 22 (C) establish the truth of any allegation by
- 23 evidence; or
- 24 (D) investigate any other matter.

25 Fed. R. Civ. P. 55(b).

26 Moreover, Central District Local Rule 55-1 provides that an application for
27 default judgment must be accompanied by a declaration in compliance with
28 Federal Rule of Civil Procedure 55(b) setting forth: (1) when and against what

1 party the default was entered; (2) the identification of the pleading to which default
2 was entered; (3) whether the defaulting party is an infant or incompetent person,
3 and if so, whether that person is represented by a general guardian, committee,
4 conservator, or other representative; (4) that the Servicemembers Civil Relief Act
5 does not apply; and (5) that notice has been served on the defaulting party if
6 required by Federal Rule of Civil Procedure 55(b)(2). L.R. 55-1.

7 In exercising its discretion to grant or deny an application for default
8 judgment, the Court considers the following factors:

9 (1) the possibility of prejudice to plaintiff if relief is
10 denied; (2) the sufficiency of the complaint; (3) the
11 substantive merits of the plaintiff's claim; (4) the amount
12 of money at stake; (5) the possibility of a dispute as to
13 material facts; (6) whether the default was the result of
14 excusable neglect; and (7) the strong policy of the
15 Federal Rules that favors decisions on the merits.

16 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

17 Once a party's default has been entered, the factual allegations of the
18 complaint, except those concerning damages, are deemed to have been admitted by
19 the non-responding party. See Fed. R. Civ. Proc. 8(b)(6); see also Geddes v.
20 United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977) (stating the general rule that
21 "upon default[,] the factual allegations of the complaint, except those relating to
22 the amount of damages, will be taken as true"). Allegations of damages must be
23 proven. Geddes, 559 F.2d at 560. In addition, although well-pleaded allegations
24 in the complaint are admitted by a defendant's failure to respond, "necessary facts
25 not contained in the pleadings, and claims which are legally insufficient, are not
26 established by default." Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267
27 (9th Cir. 1992) (internal citation omitted).

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1 **III.**

2 **ORDER**

3 Accordingly, on or before **August 15, 2015**, Plaintiff is ORDERED to show
4 good cause in writing, if any exists, why Plaintiff has not proceeded to seek an
5 entry of default judgment in this action as to defendant Dekker, pursuant to Rule
6 55(b). Plaintiff is forewarned that, if he fails to show cause, request entry of
7 default judgment, or otherwise respond to this Court's Order, the Court will
8 construe such unresponsiveness as evidence of Plaintiff's lack of prosecution of
9 this action, and that such lack of prosecution will constitute a basis to dismiss this
10 action in its entirety.

11 If Plaintiff seeks to file a motion for entry of default judgment, Plaintiff's
12 motion shall, at minimum, address: (a) the procedural history of the action; (b) the
13 requirements set forth in Local Rule 55-1; (c) the default judgment factors set forth
14 in Eitel v. McCool, 782 F.2d 1470 (9th Cir. 1986); (d) the legal authority that sets
15 out the elements of the causes of action upon which Plaintiff seeks default
16 judgment; and (e) the legal basis—with specific citations to statutes and case
17 law—for his damages claims, which must be supported by admissible evidence and
18 detailed calculations. As Plaintiff is proceeding *pro se* and *in forma pauperis*,
19 upon receipt of the motion, the U.S. Marshal shall serve on defendant Dekker all
20 documents concerning Plaintiff's request for default judgment as well as this
21 Order. See 28 U.S.C. § 1915(d).

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23 DATED: July 17, 2015

24 KENLY KIYA KATO
25 United States Magistrate Judge
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